STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED
August 22, 2006

Plaintiff-Appellant,

v

No. 260798
Ingham Circuit Court
LC No. 02-001259-FH

WALTER M. LUCAS, III, DDS,

Defendant-Appellee.

Before: Cavanagh, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right an order quashing the bindover on 63 counts of Medicaid fraud, MCL 400.607(1), and 13 counts of intentionally placing false information on a medical chart, MCL 750.492a(1), and dismissing the information. We reverse.

Defendant is a dentist with offices in Flint and Saginaw. These charges arose from Medicaid claims defendant caused to be submitted for dental services he allegedly did not render to eight patients. In short, defendant would purportedly chart that he provided particular services to his patient, the chart would then go to his medical biller who would translate the information provided in the chart under the "services rendered column" into a Medicaid invoice, which would then be submitted to Medicaid for payment with defendant's computer-generated or hand-stamped signature. Following a two-day preliminary examination, defendant was bound over on all but one of the charges. Defendant then moved to quash the bindover and dismiss the information on the ground that there was no evidence of criminal intent, an element of both offenses. The circuit court agreed with defendant, concluding that it appeared that the claims were merely the result of error, not fraud. This appeal followed.

Plaintiff argues that the bindover of defendant on charges of Medicaid fraud and intentionally falsifying dental records to support those fraudulent claims was not an abuse of discretion. We agree. We review de novo the circuit court's decision to quash the bindover to determine whether the district court abused its discretion in concluding that there was probable cause to believe that the crimes charged were committed and that defendant committed them. *People v Northey*, 231 Mich App 568, 574; 591 NW2d 227 (1998); *People v Tower*, 215 Mich App 318, 320; 544 NW2d 752 (1996).

To prove a charge of Medicaid fraud under MCL 400.607, the prosecutor must generally show that: (1) a claim exists, (2) that was submitted under the social welfare act, 1939 PA 280, to

the state or its agent, (3) by or because of defendant, (4) although the claim was false, and (5) defendant knew the claim was false. See *People v Orzame*, 224 Mich App 551, 558; 570 NW2d 118 (1997). A conviction on the charge of intentionally placing false information in a medical record requires generally that the prosecutor prove that a health care provider or other person intentionally, willfully or recklessly put inaccurate information in a patient's chart. See MCL 750.492a(1). To secure a bindover on a charge, the prosecutor must provide some evidence on each element of the crime. *People v Hudson*, 241 Mich App 268, 278; 615 NW2d 784 (2000). But such evidence, including circumstantial evidence as well as reasonable inferences drawn from such evidence, need not prove each element beyond a reasonable doubt; rather, for a bindover the evidence need only establish probable cause, i.e., "a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious person to believe that the accused is guilty of the offense charged." *Orzame*, *supra*.

Here, in reversing the bindover decision of the district court, the circuit court held that there was no question that claims were made, under the social welfare act, by defendant's office, and that they were false. The court narrowed the dispositive issue down to whether defendant knew that the claims were false or whether the claims were merely erroneous or mistaken submissions. The circuit court then reviewed the evidence.

First, the court focused on the testimony of defendant's office manager, Vivian Townsend-Ali, which included that defendant did not oversee his personnel's work (including the billing) and, although she testified that defendant charted while he worked on patients, such testimony was based on her observation ten years prior to the events at issue. Next, the court considered the fact that the sixty counts arose from actions allegedly taken over a three year period and in a three year period defendant probably saw about 9,000 patients—so the charges resulted from less than 1% of defendant's business. In other words, the error rate, absent any evidence on how many patients were actually served, is likely pretty normal. The court also considered the fact that some of the false claims all occurred on one day; for example, several purported extractions were charted as occurring in one day. Taken together, the circuit court concluded that the circumstances as illustrated by the evidence were not "entirely consistent with a wrongful intent." The court also concluded that the evidence was insufficient to establish "guilty knowledge" with regard to the record entries. Accordingly, the court reversed the bindover as resulting from an abuse of discretion.

We disagree with the circuit court's reversal of the bindover decision. Under MCL 400.607(1), a person is prohibited from making or causing to be made a false Medicaid claim "knowing the claim to be false." MCL 400.602(f) provides that "knowing" or "knowingly" means

> that a person is *in possession of facts* under which he or she is aware or should be aware of *the nature of his or her conduct* and that his or her conduct is *substantially certain to cause* the payment of a medicaid benefit. Knowing or knowingly does not include conduct which is an error or mistake unless the person's course of conduct indicates a systematic or persistent tendency to cause inaccuracies to be present. [Emphasis added.]

Here, defendant caused to be made false Medicaid claims that he knew to be false, i.e., he knew his office practice was such that his charting of dental treatments and procedures were

specifically and solely relied upon by his medical biller to generate Medicaid invoices that were submitted under defendant's name and provider number to the state for reimbursement pursuant to the social welfare act.

The evidence included that defendant was a sole practitioner, he signed the Medicaid provider enrollment agreement, he did all of the dental procedures in his office, he did all of the charting for the dental procedures that he performed—and, allegedly in this case, did not perform—and, he would be the one to formulate his office policies and procedures. And, the nature of the inaccurate dental record entries were such that they were not very likely to be "mistakes." For example, defendant charted that he performed several tooth extractions, root canals, fillings, and various tooth restoration procedures, as well as fitted dentures, on several patients when, in fact, he did not. It is implausible that someone would confuse performing any one of these procedures with doing nothing, as was the case in many instances. "Intent and knowledge can be inferred from one's actions and, when knowledge is an element of an offense, it includes both actual and constructive knowledge." *People v Perez-DeLeon*, 224 Mich App 43, 48; 568 NW2d 324 (1997), quoting *People v American Medical Ctrs of Michigan, Ltd*, 118 Mich App 135, 154; 324 NW2d 782 (1982). We conclude from the evidence presented, and reasonable inferences drawn from the evidence, that the district court did not abuse its discretion. There was, at least, probable cause, i.e., "a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious person to believe"[1] that defendant is guilty of intentionally placing false information in his patients' dental records for the purpose of submitting false Medicaid claims that he knew to be false.

We reverse the circuit court's order quashing the bindover and information and remand this matter to the circuit court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Michael R. Smolenski

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[1] *Orzame*, *supra*.